

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CONSOLIDATED 3:10CV462-MOC-DSC**

THE CATO CORPORATION,)	
)	
Plaintiff,)	
)	
v.)	
)	
)	<u>MEMORANDUM AND ORDER</u>
L.A. PRINTEX INDUSTRIES, INC.,)	
)	
Defendant.)	
)	
<hr/>)	
L.A. PRINTEX INDUSTRIES, INC.,)	
)	
Plaintiff,)	
)	
v.)	
)	
THE CATO CORPORATION and LF USA, INC.,)	
)	
Defendants.)	
)	
<hr/>)	

THESE MATTERS are before the Court on Defendant's "Motion to Compel Further Discovery Responses from Plaintiff The Cato Corporation," Doc. 123, and the parties' associated briefs and exhibits, see Docs. 123-1, 124 and 134; "The Cato Corporation's Motion for Protective Order," Doc. 128, and the parties' associated briefs and exhibits, see Docs. 129, 141, 144; Defendant's "Motion for Review of Magistrate's Order," Doc. 130, and the parties' associated briefs and exhibits, see Docs. 131, 132, 133, 137, 138, 142, 147, 148 and 150; and Defendant's "Objections of L.A. Printex Industries, Inc. to Newly Raised Matters in Cato's Reply Brief and Request to File Sur-reply in Opposition to the Cato Corporation's Motion for Protective Order," Doc. 145 and Plaintiff's "Response in Opposition. . .," Doc. 146.

These Motions have been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C.

§636(b)(1), and are now ripe for the Court's consideration.

The Court has carefully examined the record, the parties' arguments and the applicable authorities. The Court finds that Judge Cogburn's August 30, 2012 Order, Doc. 122, which extended discovery until October 15, 2012 was based upon the addition of Cross-Defendant LF USA, Inc. as a party to the case and did not reopen general discovery with regard to all issues. Furthermore, since the filing of the above Motions, L.A. Printex and LF USA have filed a "Joint Motion to Dismiss LF USA, Inc. With Prejudice," Doc. 154.

Consequently, the Court finds that Defendant's "Motion to Compel Further Discovery Responses from Plaintiff The Cato Corporation," Doc. 123, is untimely and will be DENIED. "The Cato Corporation's Motion for Protective Order," Doc. 128, is GRANTED. With regard to Defendant's Request to File a Sur-reply, Doc. 145, the Motion is DENIED.

Defendant's "Motion for Review of Magistrate's Order," Doc. 130, requests that the Court exclude documents Cato produced in this litigation as CATO00037 from the Protective Order. The Court finds that Defendant has failed to show that it is unable to obtain the requested information through other reasonable means. As explained by District Judge Martin Reidinger in United States v. Bailey, "[A]lternative means of obtaining the information should be sought prior to attempting to modify a protective order entered in another case.... [P]rudential concerns convince the Court that a motion to modify a protective order in order to use material in other litigation should, in most cases, be the last resort of a party, not the first." No. 1:11cr10, 2012 WL 1340518, at *2 (April 18, 2012, W.D.N.C.)(quoting SmithKline Beecham Corp. v. Synthon Pharm., Ltd., 210 F.R.D. 163 at 167, 169 (M.D.N.C.2002)). Consequently, the Court **DENIES** Defendant's "Motion for Review of Magistrate's Order," Doc. 130.

NOW THEREFORE, IT IS ORDERED:

1. Defendant's "Motion to Compel Further Discovery Responses from Plaintiff The Cato Corporation," Doc. 123, is **DENIED**.
2. "The Cato Corporation's Motion for Protective Order," Doc. 128, is **GRANTED**.
3. Defendant's "Motion for Review of Magistrate's Order," Doc. 130, is **DENIED**.
4. Defendant's "Objections of L.A. Printex Industries, Inc. to Newly Raised Matters in Cato's Reply Brief and Request to File Sur-reply in Opposition to the Cato Corporation's Motion for Protective Order," Doc. 145, is **DENIED**.
5. The Clerk is directed to send copies of this Memorandum and Order to counsel for the parties; and to the Honorable Max O. Cogburn, Jr.

SO ORDERED.

Signed: November 9, 2012



David S. Cayer
United States Magistrate Judge

